



## **CITY OF DURHAM**

**Public Works Department  
Stormwater Services Division  
101 City Hall Plaza  
Durham, North Carolina 27701**

### **Request for Proposals (RFP)**

Date of Issue: **February 17, 2006**

#### **Professional Services for Drainage System Rerouting Plans and Specifications**

**Through this RFP, the City of Durham is soliciting proposals from professional engineering consultants for the analysis, design, cost estimate, and construction ready plans and specifications for rerouting the drainage system at 2514 University Drive.**

**Project Manager Name  
Project Manager Department  
Project Manager Division  
Project Manager Telephone Number  
Project Manager E-mail**

**Christina M. Sokol, P.E., CFM  
Public Works Department  
Stormwater Services Division  
919-560-4326  
Christy.Sokol@durhamnc.gov**

#### **A. Definitions in this RFP**

**“City”** means the City of Durham.

**“Proposal”** is the response of a person, firm, or corporation proposing to provide the services sought by this RFP.

**“Proposer”** is the person, firm, or corporation that submits a proposal.

**“Contractor”** is the Proposer with which the City enters into a contract to provide the services sought by this RFP.

#### **B. Background**

The drainage system located on private property at 2514 University Drive begins as a 72” CMP in the back of the property, runs east under the parking lot, transitions to a large box configuration under the building, splits into a smaller box and a 48” CMP at the front of the building, and flows into twin 48” CMPs under University Drive. See copy of the enclosed plat that shows the approximate location of this system. Failure of the system at the front of the property has caused a large void under the parking lot, sign and front portion of the building. The owner has appealed to the City for the repair of his system.

As this system receives runoff from a publicly maintained street it is eligible for the City’s private property drainage assistance program administered through the Public Works Department, Stormwater Services Division. Due to the location and current condition of the system it is proposed to reroute the drainage system around the building.

#### **C. Scope of Work**

The City is soliciting a person, firm, or corporation (referred to hereafter as the Contractor) to provide professional services for the analysis, design, cost estimate, and construction ready plans and specifications for rerouting the drainage system at 2514 University Drive. The plans and specifications must be signed and sealed by a registered professional engineer licensed in the State of North Carolina. The City expects that the successful proposal will develop a schedule for expediting this work for completion in as short a turn around time as is reasonable and prudent.

#### **D. Submittal Requirements**

The Proposal should be divided into the individual sections listed below. Proposers are urged to include only information that is relevant to this specific project so as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the RFP and emphasize the Proposer’s demonstrated capability to provide services of this type.

All requirements and questions should be addressed and all requested data should be supplied. The City reserves the right to request additional information which, in its opinion, is necessary to ensure that the Proposer's competence, number of qualified employees, business organization and financial resources are adequate to perform according to contract.

## **1. Cover Letter**

The proposal should contain a cover letter, signed by a principal in the firm, indicating his or her title that he or she has authority to submit the proposal on behalf of the firm, including the cover letter. The cover letter should contain the following statement:

"The undersigned has the authority to submit this proposal on behalf of the name of company in response to the City of Durham RFP for Professional Services for Drainage System Rerouting Plans and Specifications."

The cover letter should contain one of the following two paragraphs:

"With respect to all Trade Secrets that the proposer may submit to the City in connection with this proposal or the contract, if the contract is awarded to the proposer, the proposer shall comply with the section of the RFP titled "Trade Secrets and Confidentiality," (see Appendix A) including but not limited to all of its subsections, such as the subsection titled "Defense of City." The proposer acknowledges that the City will rely on the preceding sentence."

**-or-**

"The proposer is not submitting and shall not submit any Trade Secrets to the City in connection with this proposal or the contract, if the contract is awarded to the proposer. The proposer acknowledges that the City will rely on the preceding sentence."

## **2. Qualifications and References**

The RFP should provide a description of the professional and technical experience, background, qualifications and professional licensing/certification of the firm. The Proposer should show that their firm possesses demonstrated experience in all areas of the project scope of services. Include:

- Brief history of the Proposer, range of services offered, licensing and number of years experience.

- Identify any subcontractors (or sub-consultants) proposed to be used on this project and their location. Clearly explain their role and the percentage of involvement.

### **3. Relevant Experience**

The RFP should include the firm's experience in similar projects and should include references and contact information. If licensing is required or appropriate, please set forth the licensing that your firm has.

### **4. Project Team**

Identify the primary contact professional who would be assigned responsibility for this project and note their experience with projects of a similar scope. Also identify other assigned personnel, their qualifications and their location.

Include detailed resumes as an attachment to the Proposal. Illustrate the projected availability of proposed project team members to complete the work and the percentage of their time to be devoted to the project.

The proposal should state to what extent, if any, the services to be performed may be subcontracted.

### **5. Methods and Procedures**

The Proposal should provide a detailed methodology for accomplishing the entire project scope. This project approach shall include additional suggestions that are not specifically requested in this RFP, but are considered necessary to ensure a high degree of safety, constructability, value and operation.

If your Proposal assumes that the City will take certain actions or provide certain facilities, data or information, state these assumptions explicitly.

The proposal should include the estimated fee and recommended fee basis.

### **6. Equal Business Opportunity Program**

It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

**All contractors are required to provide information requested in the “SDBE Professional Services Forms” package, (see Appendix B).** Proposals that do not contain the appropriate, completed “Professional Services Forms” will be deemed non-responsive and ineligible for consideration. The “Declaration of Performance,” “Participation Documentation,” “Managerial Profile,” “Equal Opportunity Statement” and the “Employee Breakdown” documents are required of all contractors. In lieu of “Employee Breakdown,” contractors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.

There are no SDBE goals identified for this project. However, the forms as referenced above must be included and attached as part of the submitted Proposal.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about “SDBE Professional Services Forms” should be referred to Deborah Giles or other department staff at 919-560- 4180.

## **7. Non-Collusion**

This RFP constitutes an invitation to bid or propose. Include and sign the following with your response:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, \_\_\_\_\_ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this bid, proposals or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature: \_\_\_\_\_

## **8. Contract**

It is the City’s intention to use the contract that is attached as Appendix D. If your firm objects to any of the contract’s content, please state the objections.

## **9. Exceptions**

Any and all exceptions to the RFP must be listed on an item-by-item basis and cross-referenced with the RFP document. If there are no exceptions, Proposer must expressly state that no exceptions are taken.

If your firm wishes to submit a proposal that does not comply with the standards as discussed above, it is recommended that you also submit one that does comply in addition to the one that does not comply so that your “non-compliant” version can be considered as an alternative if the City is interested in it. This will allow your firm’s compliant version to be considered if the City remains steadfast on applying the standards discussed above.

## **E. Conditions**

### **1. Pre-submittal Meeting**

The City will conduct a pre-submittal meeting at 2:00 P.M. on Tuesday, February 21, 2006 in the Public Works Conference Room, Third Floor, City Hall. Attendees should be familiar with this RFP. Attendance is strongly recommended and the City may consider attendance in deciding on the award of the contract.

### **2. Limit on Claims**

No proposer will have any claims or rights against the City for participating in the proposal process, including without limitation submitting a proposal. The only rights and claims any proposer will have against the City arising out of participating in the proposal process will be in the contract with the selected proposer.

### **3. Submittal Deadline and Location**

Six (6) copies of the Proposer’s RFP must be submitted by 4:00 P.M. on Monday, March 6, 2006 to:

Ms. Christina M. Sokol, P.E., CFM  
Public Works Department  
Stormwater Services Division  
101 City Hall Plaza  
Durham, North Carolina 27701

Questions about the RFP should be directed to the same as above.

### **4. Discretion of the City**

The City of Durham reserves the right to reject any or all proposals. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any firm proposing to do the work with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said

that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for the work with one or more firms that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion.

#### **5. Financial Condition of the Firm**

The City may request that the Proposer provide an annual operating statement, income tax form, or other reasonably comprehensive evidence of financial condition. Financial data provided in response to this RFQ will be held confidential if marked "confidential".

The Proposer must be willing and able to provide insurance coverage, bonding and forms required by the City (Appendix C).

#### **6. Proposal Format**

The Proposal should be no longer than six pages in length, exclusive of individuals' resumes, examples of work experience and references, and required SDBE forms (these items should be included in tabbed sections and placed behind the main document. Minimum font size should be the equivalent of 12 pt Times New Roman. One-inch margins are preferred.

Expensive bindings, colored displays, promotional materials, etc. are not necessary, nor desired. Emphasis should be concentrated on completeness and clarity of content. Please refer to Section D for information on submittal requirements.

#### **7. Notice Under the Americans with Disabilities Act (ADA)**

The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact the office of Guillermo Rodriguez, RLA, ADA Coordinator, Voice: 919-560-4197 x237, TTY: 919-560-4809; [guillermo.rodriguez@durhamnc.gov](mailto:guillermo.rodriguez@durhamnc.gov), as soon as possible but no later than 48 hours before the scheduled event.

## Appendix A: Trade Secrets and Confidentiality

**Trade Secrets and Confidentiality.** As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

**(a) Designation of Confidential Records.** The terms “Trade Secrets” and “record” are defined in (a)(1) (Definitions). To the extent that the Proposer wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the Proposer shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The Proposer shall not designate any material provided to the City as Trade Secrets unless the Proposer has a reasonable and good-faith belief that it contains a Trade Secret. When requested by the City, the Proposer shall promptly disclose to the City the Proposer’s reasoning for designating individual materials as Trade Secrets. In providing materials to the City, the Proposer shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the Proposer ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

### (1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.



“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the Proposer’s proposal.

**(b) Request by Public for Access to Record.** When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

- (1) decline the request for access,
- (2) notify the Proposer of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the Proposer of the request and that the City intends to decline the request.

Before declining the request, the City may require the Proposer to give further assurances so that the City can be certain that the Proposer will comply with subsection (c) (Defense of City).

**(c) Defense of City.** If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the Proposer shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the Proposer shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney. Definitions. As used in this subsection (c), “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest. Indemnitees” means the City, and officers, officials, independent contractors, agents, and employees, of the City.

“Indemnitees” does not include the Proposer. The City may require the Proposer to provide proof of the Proposer’s ability to pay the amounts that may reasonably be expected to become monetary obligations of the Proposer pursuant to this section. If the Proposer fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the Proposer.

## Appendix B: SDBE Professional Services Forms



# CITY OF DURHAM SMALL DISADVANTAGED BUSINESS ENTERPRISE PROFESSIONAL SERVICES FORM



### Equal Opportunity/ Equity Assurance Department

**Mailing Address:**  
101 City Hall Plaza  
Durham, North Carolina 27701

**Street Address:**  
211 Rigsbee Avenue  
Durham, North Carolina 27701

**Phone:** (919) 560-4180  
**Facsimile:** (919) 560-4513

## CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

### **Policy Statement**

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

### **Goals**

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

## **Equal Business Opportunity Ordinance SDBE Participation Documentation**

**If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.**

**Declaration of Performance** must be completed and submitted with your proposal.

**SDBE Participation Documentation** must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

**Managerial Profile** must be used to list the managerial persons in your workforce who will be participating in this project.

**Equal Employment Opportunity Statement** for your company must be completed and submitted with your proposal.

**Employee Breakdown** must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

**Letter of Intent to Perform as a Sub-consultant/Subcontractor** must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

### **Post Proposal Submission SDBE Deviation**

Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

### **SDBE Goals Not Met/Documentation of Good Faith Efforts**

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase SDBE participation such that the amounts subcontracted are consistent with the established goals.

# **SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES**

## **Goal**

The purpose is to provide Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

## **Definition of the Scope of the Selection Policy**

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

## **Small Disadvantaged Business Proposal Requirements**

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's Request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services SDBE Forms.

## **Selection Committee for Professional Services**

A selection committee shall be established to be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director and Purchasing Manager. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, SDBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. SDBE Participation; and
12. Documentation of Good Faith efforts.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

### **Contract Award**

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

### **Project Evaluation**

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

## **DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR**

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:
  
2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:
  
3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) \_\_\_\_\_ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and
- b) \_\_\_\_\_ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.
- c) \_\_\_\_\_ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

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**Date**

**Authorized Signature**

**PARTICIPATION DOCUMENTATION  
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

<b>Names of all firms Project (including prime and subconsultants/sub- contractors)</b>	<b>Location</b>	<b>SDBE Firm Yes/No</b>	<b>Nature of Participation</b>	<b>% of Project Work</b>

TOTAL \_\_\_\_\_

\_\_\_\_\_  
Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

\_\_\_\_\_  
Signature - Authorized Officer of Prime Consultant/Contractor Firm

\_\_\_\_\_  
Date



### Managerial Profile

Name of Firm: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Date: \_\_\_\_\_

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition\* of the City of Durham's Equal Business Opportunity Ordinance.

### Managerial Employees

NAME	POSITION	SOCIALLY/ECONOMIC
		ALLY DISADVANTAGED* (YES/NO)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\* M-Minority(African American) W-Woman Other-H-Hispanic, AI-American Indian, AS-Asian American, Handicapped

**EQUAL EMPLOYMENT OPPORTUNITY STATEMENT**  
(You may submit your organization's EEO policy in lieu of this sheet)

## Part A – Employee Statistics for the Primary Location

Employment Category	Total Employees	Total Males	Total Females	M---a---l---e---s		Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	F---e---m---a---l---e---s		Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
				White	Black				White	Black			
Project Manger													
Professional													
Labor													
Clerical													
Totals													

## Part B – Employee Statistics for the Consolidated Company *(See instructions for this form on whether this part is required.)*

Employment Category	Total Employees	Total Males	Total Females	M---a---l---e---s		Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	F---e---m---a---l---e---s		Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
				White	Black				White	Black			
Project Manger													
Professional													
Labor													
Clerical													
Totals													

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## Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

Minority (African American) ☐ Woman ☐ Hispanic ☐

American Indian ☐ Asian American ☐ Handicapped ☐

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The undersigned will subcontract \_\_\_\_\_% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

The undersigned will enter into a formal agreement in the amount of \$\_\_\_\_\_ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name \_\_\_\_\_ Title \_\_\_\_\_

Company \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

## REQUEST TO CHANGE SDBE PARTICIPATION

Project: \_\_\_\_\_  
Name of bidder or consultant: \_\_\_\_\_  
Name and title of representative bidder or consultant: \_\_\_\_\_  
Address (including zip code): \_\_\_\_\_  
Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Total amount of original contract, before any change orders or amendments: \_\_\_\_\_  
Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: \_\_\_\_\_  
Dollar amount of changes proposed in this form: \_\_\_\_\_  
The proposed change (*check one*)   ☐ **increases**      ☐ **decreases**    the dollar amount of the bidder's/consultant's contract with the City.  
Does the proposed change decrease the SDBE participation? (*check one*)   ☐ **yes**      ☐ **no**  
If the answer is **yes**, complete the following:

**BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):**

Name of subconsultant: \_\_\_\_\_  
Goods and services to be provided before this proposed change: \_\_\_\_\_  
Is it proposed to eliminate this subcontract?   ☐ yes   ☐ no  
If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*):  
\_\_\_\_\_  
\_\_\_\_\_

Dollar amount of this subcontract before this proposed change: \_\_\_\_\_  
Dollar amount of this subcontract after this proposed change: \_\_\_\_\_  
This subconsultant is (*check one*):  
☐ 1. City-certified Black-owned SDBE  
☐ 2. City-certified Women-owned SDBE  
3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as  
    3(a) ☐ Black-owned SDBE      3(b) ☐ Women-owned SDBE  
☐ 4. not a City-certified SDBE

**BOX B. Proposed subcontracts other than the subcontract described in Box A above**

Name of subcontractor for the new work: \_\_\_\_\_  
Goods and services to be provided by this proposed subcontract: \_\_\_\_\_  
Dollar amount proposed of this proposed subcontract: \_\_\_\_\_  
This subcontractor is (*check one*):  
☐ 1. City-certified Black-owned SDBE  
☐ 2. City-certified women-owned SDBE  
3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as  
    3(a) ☐ Black-owned SDBE      3(b) ☐ Women-owned SDBE  
☐ 4. not a City-certified SDBE

*Add additional sheets as necessary.*

**SDBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.**

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage SDBEs along with other criteria that the City Manager deems proper:

Name of Bidder: \_\_\_\_\_

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** \_\_\_\_\_ (Don't count the 2 pages of this questionnaire.)*

***If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.***

**1. SOLICITING SDBEs.**

(a) Did your firm solicit, through all reasonable and available means, the interest of all SDBEs certified (that is, in the City's database) in the scope of work of the contract? ☐ **yes** ☐ **no**

(b) In such soliciting, did your firm advertise? ☐ **yes** ☐ **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? ☐ **yes** ☐ **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

(d) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

(e) Did your firm provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

(f) Did your firm follow up with SDBEs that showed interest? ☐ **yes** ☐ **no**

(g) With reference to the SDBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them:

- (i) the specific work your firm was considering for subcontracting? ☐ **yes** ☐ **no**
- (ii) that their interest in the contract is being solicited? ☐ **yes** ☐ **no**
- (iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

**2. BREAKING DOWN THE WORK.**

(a) Did your firm select portions of the work to be performed by SDBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**



*See next page for remaining questions.*

**3. NEGOTIATION.** In your answers to 3, you may omit information regarding SDBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of SDBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific. **ANSWER:**

**4. ASSISTANCE TO SDBEs ON BONDING, CREDIT, AND INSURANCE.**

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?

☐ **yes** ☐ **no** (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist SDBEs to obtain bonds, lines of credit, or insurance? ☐ **yes** ☐ **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? ☐ **yes** ☐ **no** If **yes**, describe. **ANSWER:**

**5. GOODS AND SERVICES.** What efforts did your firm make to help interested SDBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

**6. USING OTHER SERVICES.**

(a) Did your firm use the services of the City to help solicit SDBEs for the work? ☐ **yes** ☐ **no** Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit SDBEs for the work? ☐ **yes** ☐ **no** Please explain. **ANSWER:**

## **Appendix C: Insurance Requirements**

Contractor shall maintain insurance not less than the following:

### Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- contractual liability
- independent contractors, if any are to be used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

### Professional Liability, covering

- Architects and engineers (employed or engaged by Contractor) covering claims arising out design work and construction oversight, calculations and estimates, and any other professional architectural or engineering services performed in connection with this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate
- Self-insured retentions/deductibles in excess of \$25,000 must be approved by City Finance Director • coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- Combined single limit not less than \$2,000,000 per occurrence; aggregate limit not less than \$3,000,000 per year; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director

### Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract); certificate must specifically state who is covered by the policy)
- employers' liability, any limits.

### Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:  
City of Durham, North Carolina  
attention: Finance Director  
101 City Hall Plaza  
Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

## Appendix D: Sample Contract

### CONTRACT FOR: Professional Services for Drainage System Rerouting Plans and Specifications

This contract is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City") and [name of firm] ("Contractor"), [Indicate type of entity, for instance:

*a corporation organized and existing under the laws of [name of State];  
a professional corporation organized and existing under the laws of [name of State]; a  
professional association organized and existing under the laws of [name of State]; a limited  
partnership organized under the laws of [name of State];  
a sole proprietorship;  
or a general partnership].*

Sec. 1. Background and Purpose. The drainage system located on private property at 2514 University Drive begins as a 72" CMP in the back of the property, runs east under the parking lot, transitions to a large box configuration under the building, splits into a smaller box and a 48" CMP at the front of the building, and flows into twin 48" CMPs under University Drive. Failure of the system at the front of the property has caused a large void under the parking lot, sign and front portion of the building. The owner has appealed to the City for the repair of his system.

As this system receives runoff from a publicly maintained street it is eligible for the City's private property drainage assistance program administered through the Public Works Department, Stormwater Services Division. Due to the location and current condition of the system it is proposed to reroute the drainage system around the building.

Sec. 2. Basic Services and Scope to be Performed. The Contractor shall provide professional services for the analysis, design, cost estimate, and construction ready plans and specifications for rerouting the drainage system at 2514 University Drive. The plans and specifications must be signed and sealed by a registered professional engineer licensed in the State of North Carolina. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract.

(a) After written authorization to proceed, the Contractor shall perform the following professional services:

1. Consult with the "City" to clarify and define the City's requirement for the Work and review available data;
2. Advise the City as to the necessity of the City providing or obtaining from others special services and data required in connection with the Work and assist the city in obtaining such data and services;
3. Prepare an analysis, design, cost estimate, and construction ready plans and specifications and review it in person with the City.

(b) Project Planning/Design.

1. The Contractor shall propose to the City specific design which shall be utilized for this project. The design shall include but may not be limited to the following:
  - i. Proposed material
  - ii. Construction ready plans and specifications
  - iii. Estimated cost for construction
2. The Contractor shall meet with the City to discuss the proposed design.
3. The Contractor shall revise the project design as directed by the City and submit the design to the City for final approval.

(c) Preparation of Information. The Contractor shall produce construction ready plans. The construction plans shall be at a scale and size determined by the City and the Engineer.

(d) Deliverables

1. The Contractor shall provide copies of any reports generated for the Work.
2. The Contractor shall provide mylar plots of the construction plans, specifications, and costs at one hundred percent (100%) completion.
3. The Contractor shall provide a copy of the digital files for the design.

Sec. 3. Additional Services. If authorized in writing by the City Additional Services related to the Contract will be performed by the Contractor for an additional professional fee.

Sec 4. City's Responsibilities. The City shall provide all criteria and full information as to the City's requirements for the assignment in a timely manner so as not to delay the services of the Contractor.

Sec 5. Period of Service.

(a) The City's Basic Services under Section 1 of this agreement shall begin upon receipt of a written notice to proceed and shall be considered complete on the date the mylars of the construction plans, specifications, and costs are accepted by the City.

(b) The Contractor's Additional Services shall be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.

(c) If any time period within any of the Contractor's services are to be completed is exceeded by more than ninety (90) days through no fault of the Contractor, all rates, measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.

(d) The Contractor acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this agreement in a manner consistent with that schedule, as provided below. The City understands, however, that the Contractor's performance must govern by sound professional practices. The following schedule is anticipate:

*[Insert scheduled of successful proposer.]*

Sec. 6. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 7. Compensation. The City shall pay the Contractor for the Work as follows:

(a) For Basic Services. The City shall pay the Contractor for all Basic Services rendered under Section 2 as follows: *[Insert payment as agreed to between the City and successful proposer]*

(b) For Additional Services. The City shall pay the Contractor for all Additional Services rendered under Section 3 on the basis agreed to in writing by the parties at the time such services are authorized.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 8. Contractor's Billings to City. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Sec. 9. Cost Control. Opinions of probable construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by the Contractor hereunder shall be made on the

basis of Contractor's experience and qualifications and represent Contractor's judgment as an experienced and qualified design professional. It is recognized, however, the Contractor does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or construction contractor's methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the report must of necessity be speculative until completion of its detailed design. Accordingly, Contractor does not guarantee that proposals, bids or actual costs shall not vary from opinions, evaluations or studies submitted by Contractor to City hereunder.

Sec. 10. Insurance. Contractor shall maintain insurance not less than the following:  
Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- contractual liability
- independent contractors, if any are to be used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Professional Liability, covering

- Architects and engineers (employed or engaged by Contractor) covering claims arising out design work and construction oversight, calculations and estimates, and any other professional architectural or engineering services performed in connection with this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate
- Self-insured retentions/deductibles in excess of \$25,000 must be approved by City Finance Director • coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- Combined single limit not less than \$2,000,000 per occurrence; aggregate limit not less than \$3,000,000 per year; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract); certificate must specifically state who is covered by the policy)
- employers' liability, any limits.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:  
City of Durham, North Carolina

attention: Finance Director  
101 City Hall Plaza  
Durham, NC 27701

- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Sec. 11. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 12. Exhibits. The following exhibits are made a part of this contract:

Exhibit A Request for Proposals dated February 17, 2006 prepared by the City.

Exhibit B Proposal dated [*Insert date of proposal*] prepared by the Contractor.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Christina M. Sokol, P.E., CFM  
Department of Public Works  
Stormwater Services Division  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701  
The fax number is 919-560-4316.

To the Contractor:



*[Insert name and address]*

The fax number is \_\_\_\_\_.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 15. Trade Secrets and Confidentiality. The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. The word "Proposer" used in that section shall mean the "Contractor."

Sec. 16. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 17. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its

rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the

Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Chapter 26 and not to the Contractor’s alleged violations of other obligations.

(j) Prompt Payment to Subcontractors. Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City’s Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City’s Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) “Duties” includes obligations. (6) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word “shall” is mandatory. (8) The word “day” means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this

contract.

(n) Americans with Disabilities Act (ADA) Provisions. The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact the office of Guillermo Rodriguez, RLA, ADA Coordinator, Voice: 919-560-4197 x237, TTY: 919-560-4809; guillermo.rodriguez@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

ATTEST:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
City Manager

NORTH CAROLINA ACKNOWLEDGMENT BY CITY OF DURHAM  
COUNTY of \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State certify that

\_\_\_\_\_ personally appeared before me  
this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the City  
of Durham, a municipal corporation, and that by authority duly given and as the act of the  
City, the foregoing agreement was signed in its corporate name by its \_\_\_\_\_  
City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy  
City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

ATTEST:

Insert Firm's Name

\_\_\_\_\_  
By: \_\_\_\_\_

STATE OF \_\_\_\_\_ CORPORATION ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a notary public in and for said county and state, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he or she is \_\_\_\_\_ Secretary of \_\_\_\_\_, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing contract with the City of Durham was signed in its name by its \_\_\_\_\_ President, whose name is

\_\_\_\_\_, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public